



California Fair Political Practices Commission

January 17, 1986

Terry Caldwell
Councilmember
City of Victorville
14343 Civic Drive
Victorville, CA 92392-2399

Re: Your Request for Advice
Our File No. A-85-264

Dear Mr. Caldwell:

Thank you for your letter requesting advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

You are a Victorville City Councilmember. The Victorville City Council sits as the City of Victorville Redevelopment Agency Board of Directors.

The Redevelopment Agency consists of approximately 1,100 acres of which approximately 800 acres are owned by a business entity located in Memphis, Tennessee. William Porter, a local real estate broker, has an exclusive right to sell the acreage of the Tennessee business entity which is located within the Victorville Redevelopment Agency boundaries.

Neither you nor Mr. Porter own any land within the Victorville Redevelopment Agency boundaries. You are Mr. Porter's private attorney but you do not provide legal advice to him concerning his efforts to sell property within the Victorville Redevelopment Agency. You and Mr. Porter do have joint real estate holdings and business ventures outside of the Victorville Redevelopment Agency boundaries but have no

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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corporate, partnership, joint venture or other type of business relationship within or adjacent to the Victorville Redevelopment Agency boundaries.

QUESTION

Under the Political Reform Act, does your relationship with Mr. Porter, require you to disqualify yourself from decisions of the Victorville Redevelopment Agency Board of Directors and/or the Victorville City Council which may affect the Redevelopment Agency area?

ANALYSIS

Section 87100 requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest. An official has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect on, among other interests, a source of income to the official of \$250 or more in the 12 months preceding the decision. Section 87103(c).

Presumably Mr. Porter will be a source of income to you of \$250 or more in the 12 months preceding any decision.^{2/} If so, you must disqualify yourself from participating in any decision which will have a reasonably foreseeable material financial effect on Mr. Porter.

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. The relevant regulations for purposes of this analysis are contained in 2 Cal. Adm. Code Sections 18702 and 18702.1 (copies enclosed).^{3/}

^{2/} Income of an individual is defined in the act to include the individual's pro rata share of any income to a business entity in which the individual has a 10% or greater ownership interest. Section 82030(a). For example, if you own, 100% of your law practice, 100% of the gross receipts of the practice are attributed as income to you as an individual.

^{3/} The Commission is currently considering adopting a new regulation which further defines materiality for redevelopment decisions. See enclosed notice for regulation 18702.6.

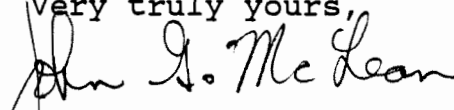
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An effect on Mr. Porter would be considered material if it is a significant effect. 2 Cal. Adm. Code Section 18702(b)(3)(D). Any decision which could substantially affect the amount, or the prospects, of a commission to be earned by Mr. Porter would therefore be considered to have a material financial effect on Mr. Porter.^{4/}

You may wish, in the future, to seek specific advice about a particular decision. In the meantime, I hope this general advice proves helpful.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



John G. McLean
Counsel
Legal Division

JGM:plh
Enclosures

^{4/} For instance, if Mr. Porter had a conditional sale of the property agreed to and the condition precedent involved an action by the Redevelopment Agency, disqualification would clearly be required. Of course, a decision which would increase the property's value and enhance the property's salability would require disqualification.

CITY OF
VICTORVILLE



619-245-3411

14343 Civic Drive

Victorville, California 92392-2399

December 17, 1985

John Keplinger, Executive Director
Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95814

Dear Mr. Keplinger:

I am an elected City Councilperson for the City of Victorville and have been a Councilperson since 1972. I am requesting an opinion pursuant to Government Code Section 83114.

The material facts related to the requested opinion are as follows:

1. I am an elected City Councilperson.
2. The Victorville City Council sits as the City of Victorville Redevelopment Agency Board of Directors, consequently, I am also a member of the Victorville Redevelopment Agency Board of Directors;
3. The Redevelopment Agency consists of approximately 1,100 acres of which approximately 800 acres are owned by a business entity located in Memphis, Tennessee. A local real estate broker by the name of William Porter has an exclusive right to attempt to sell the owners' acreage that is located within the Victorville Redevelopment Agency boundaries;
4. In the event that Mr. Porter would sell land within the Victorville Redevelopment Agency, he would receive a commission from the sale from the owners of the property in Memphis, Tennessee;
5. I own no land in the Victorville Redevelopment Agency;
6. Mr. Porter does not own any land within the Victorville Redevelopment Agency boundaries.
7. I am Mr. Porter's private attorney but I do not provide legal advice to him concerning his efforts to sell property within the Victorville Redevelopment Agency.
8. Mr. Porter and I do have joint real estate holdings and business ventures outside of the Victorville Redevelopment Agency boundaries but we have no corporate, partnership, joint venture or other type of business relationship within or adjacent to the Victorville Redevelopment Agency boundaries.

John Keplinger
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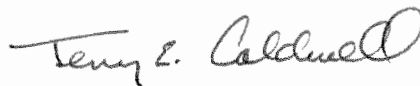
In summary, I provide legal services to Mr. Porter and I am an investor with Mr. Porter in certain real estate investments, none of which is located in the Redevelopment Agency area. Mr. Porter, in turn, as a licensed real estate broker, has the opportunity to sell land within the Redevelopment Agency area and receive a commission from the owners of the land. I receive no financial or other economic benefit of any kind whatsoever from Mr. Porter's involvement or transactions in the Redevelopment Area.

However, whenever the Victorville Redevelopment Agency Board of Directors votes to expend public monies for public facilities such as sewers, streets, curbs and gutters, street lights, and other off-site improvements, it has the effect of enhancing the value of the property owned by the owners located in Memphis, Tennessee. Consequently, when Mr. Porter might sell a portion of the property located within the Victorville Redevelopment Agency boundaries, he is earning a commission, or at least a portion of his commission, because of the enhanced property values which, to a certain extent, are the result of the expenditures of public funds for the various off-site improvements.

The issue, then, is whether my relationship with Mr. Porter as his personal attorney and as an investor/partner in activities and investments outside the Victorville Redevelopment Agency boundaries creates a conflict of interest that requires me to disqualify myself as a member of the Victorville Redevelopment Agency Board of Directors and/or the Victorville City Council whenever there is a decision to expend public funds, change zones or make any other decision that might effect the Redevelopment Agency area.

Should you need additional material facts, or an explanation of any of the information provided herein or wish to discuss this matter in further detail, I would appreciate your contacting me immediately.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Terry E. Caldwell". The signature is fluid and cursive, with a large, stylized "C" at the end.

Terry E. Caldwell
Councilman

TEC/mn



California Fair Political Practices Commission

December 20, 1985

Terry Caldwell
Victorville Councilmember
1434 Civic Drive
Victorville, CA 92392-2399

Re: A-85-264

Dear Mr. Caldwell:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

John G. McLean
Counsel
Legal Division

JGM:plh

cc: Anthony Piazza

P H O N E M E M O	TO	Bob L.	DATE	12-23	TIME	10:35 AM
	FROM	M Terry Caldwell	AREA CODE	(619)	NUMBER	245-1637
	OF	City of Victorville	EXTENSION			
	MESSAGE He needs a formal written opinion advice phone call.					
SIGNED			JGM			
PHONED <input checked="" type="checkbox"/>		CALL BACK <input type="checkbox"/>	RETURNED CALL <input checked="" type="checkbox"/>	WANTS TO SEE YOU <input type="checkbox"/>	WILL CALL AGAIN <input type="checkbox"/>	WAS IN <input type="checkbox"/>
URGENT <input type="checkbox"/>						